IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:19.1.2007

Coram:

The Honourable Mr.Justice J.A.K.SAMPATH KUMAR

A.S.No.180 of 1993

1.Krishna Gounder
2.Rajendran
3.Nalayini .. Appellants/Defendants 1, 3 & 4

-Vs-

1.Venda Ammal
2.Minor Renuka
3.Minor Veeramani
2 and 3 represented by their mother and natural guardian Venda Ammal. .. Plaintiffs 1 to 3 and
4.Thurukki .. Respondents/Defendant No.2

The Appeal is filed Under Section 96 of the Civil Procedure Code against the Judgment and decree dated 16.10.1992 made in O.S.No.7 of 1987 on the file of the Sub Court, Arani, Nort Arcot-Ambedkar District.

For Appellants : Mr.K. Rajendra prasad

For Respondents 1 to 3 : Mr.R.Gopalakrishnan

For Respondent4: Not Appeared

JUDGMENT

This appeal is filed by defendants 1, 3 and 4 against the judgment dated 16.10.1992 in O.S.No.7 of 1987, on the file of the Sub Court, Arani, Nort Arcot-Ambedkar District in and by which, the learned Sub Judge after analysing the evidence in depth decreed the suit for partition of suit property granting the due share according to the entitlement of the plaintiff.

2. For convenience, the parties are referred as arrayed in the original suit.

3. The suit properties are the joint family properties of the defendants and the deceased husband of the first plaintiff, who constitute a member of an undivided Hindu Joint family. Certain of the properties

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have been acquired by the first defendant from his aunt one Valliammal, by registered settlement deed dated 20.2.1965 and certain of the properties were settled in favour of the defendants 2 and 3 and the deceased Perumal, husband of the first plaintiff, by the father of the first defendant under a Registered settlement deed dated 11.12.1980.

3.1. The properties were treated and enjoyed by the defendants and the deceased Perumal as the joint family properties with other joint family properties for several decades.

3.2. The lands of the said joint family were fertile and were yielding quite considerable income and afforded sufficient nucleus for the purchase of the other properties by the said joint family, some of them standing in the name of the first defendant as the manager and kartha of the said joint family.

3.3. The said joint family has also effected lots of improvements by the joint exertion and have made them so fertile which afforded the nucleus aforesaid due to such exertion by the members of the said joint family.

3.4. While so, taking advantage of the sudden demise of the husband of the first plaintiff, who was a member of the joint Hindu family and the defendants have become hostile towards the plaintiff and the plaintiffs are being illtreated by the defendants. In fact they were not even given their due and legitimate share in the income from the joint family lands ever since the death of the husband of the first plaintiff.

3.5. After the death of the husband of the first plaintiff, there were incohate attempts for the partition including the one in the presence of panchayatdars and the defendants were not willing to effect and deliver the plaintiffs due share. Hence, the suit.

4. Defendants 1 to 3 states as follows:-

4.1. The relation ship of the parties mentioned in the plaint alone is admitted. It is also true that Perumal died on 3.9.86 at Siravanjipattu village. None of the suit properties were treated and enjoyed as joint family property by the defendants at any point of time. The defendants submit that the suit properties are not joint family properties. The plaintiffs have not filed any document to show that the suit properties are joint family properties and they are entitled to 1/4th share in the same. The 1st defendant was allotted only 2.54 acres of land in the partition held between himself and his brothers on 19.5.67. The rest of the properties mentioned in the plaint are all the self acquired properties of the first defendant.

4.2. The lands allotted to the share of the first defendant were not income yielding properties. The lands do not possess water resources.

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The lands allotted to the first defendant are unproductive lands and they are not income yielding properties. The income from the above said lands are hardly sufficient to maintain the family even. The first defendant has been doing business in hayrick cattle. Vegetables and goats and out of his hard work and labour the first defendant acquired about 15 acres of land. He has also constructed a terraced house and all the properties acquired by the defendants are self acquired properties and they cannot be called joint family properties. The first defendant never treated his self acquired properties as joint family properties at any point of time. Neither the 2nd defendant and 3rd defendant nor the plaintiffs the heirs of Perumal are entitled to any share in the properties acquired by the first defendant. There was no sufficient joint family nucleus to acquire properties by the first defendant. All the properties acquired by the first defendant are his own self acquired properties and they were acquired without the said of the joint family property income. The first defendant out of his hard work and labour and by doing business acquired the properties in his name. The plaintiffs have deliberately described the self acquired properties of the first defendant as joint family properties in order to claim larger share in the suit properties.

4.3. One Valliammal, executed the settlement deed dated 22.2.1965 in favour of Rathina Gounder, Krishna Gounder and Raya Gounder, sons of Munia Gounder conveying the lands bearing S.No.110/3 0.05 acres 114/4 0.12 acres 112/3 0.71 acres and S.No.116 0.10 ½ acres by the registered settlement deed dated 22.2.1965. The first defendant has been enjoying the above said properties purchased under the above said sale deeds in his own right and as absolute owner. The properties covered by the above sale deeds are situate at Suruvanjipattu village, Cheyyar Taluk.

4.4. Item Nos.1 to 4 and 42, 43 and 44 are also the self acquired properties of the first defendant. The terraced house described in item No.44 was constructed by the first defendant out of his own funds. The plaintiffs or the defendants 2 and 3 are not entitled to any share in the self acquired properties of the first defendant.

4.5. No amount is deposited in the Vembakkam Village Credit Co-operative Bank in the name of the first defendant. No amount is also due from Parthasarathy Mudaliar of Irumaram village. The pronotes mentioned in item Nos.12 to 18 are alone true. But all the pronotes are in the custody of the plaintiffs. The amount advanced under the above said pronotes belong to the first defendant. The loan advanced to the persons mentioned in item Nos.12 to 18 are the separate funds of the first defendant except the promissory note dated 13.1.1984 executed by Rajendran in favour of the second defendant. The second defendant is entitled to the amount mentioned as item No.14 of the 'B'Schedule. Perumal before his death stealthily removed all the pronotes described as item Nos.12 to 18 in the plaint. The plaintiffs are bound to produce the above pronotes before the Court. Perumal before his death also took a sum of Rs.20,000/- from the first defendant and deposited the amount in the Indian Bank, Randham Branch. The plaintiffs are bound to render account for the said

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amount.

4.6. The defendants are willing to give the plaintiffs all their legitimate share in the ancestral property.

5. The additional written statement of the second defendant reads as follows:-

5.1. The husband of the first plaintiff died on 3.9.1986 leaving behind the plaintiffs and the fourth defendant to succeed to his estate. The properties are all the joint family properties which are acquired from out of the nucleus afforded by the ancestral joint family property and out of joint exertion of this defendant; defendants 1, 2 and deceased Perumal. The properties include the properties given to them by way of settlement by their grand father and also the property given to the first defendant by his aunt, thereby all the properties were drawn into the common hotch pot to be treated as joint family property all along and they have been treating the same as such. It has never been treated as self acquired properties of any of them including the first defendant.

5.2. Before the death of Perumal on 22.8.1986, there was a partition by metes and bounds amongst the first defendant, second defendant, third defendant and the deceased Perumal evidenced by a document which was to be registered shortly but unfortunately the said Perumal died on the same night of execution of the said partition deed dated 22.8.1986. The said document will bear testimony to the aforesaid facts.

5.3. Taking advantage of the death of Perumal, the first defendant, in order to defeat the rights of the plaintiffs refused to give share to which they are legitimately entitled to and started appropriating the income for the family, without giving their due shares.

5.4. In fact there are also attempts for a partition as per the document referred to above. There are amounts standing to the credit of the first defendant in the banks referred to in the plaint in which also the defendants are entitled to a share.

5.5. The second defendant is also entitled to 1/4th share in all the plaint schedule properties. The second defendant has no objection for a decree being passed in favour of the plaintiffs.

5.6. Fourth defendant did not appear and objected the claim of plaintiff.

6. First plaintiff examined as P.W.1. M/s.Subramanyan and Subramanyan were examined as P.W.2 and P.W.3. Ex.A.1 was marked on the side of the plaintiffs. The first and second defendants were examined as D.Ws.2 and 1. One Rajamanickam was examined as D.W.3. Exs.B.1 to B.39 were marked on the side of the defendants to confront the claim of the plaintiff.

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7. The lower court after analysing the evidence in depth found that the plaintiffs are entitled to 1/4th share in the suit property and accordingly granted the preliminary decree. Against which the present appeal is filed by defendants 1, 2 and 4. The fourth defendant is none other than wife of the first defendant. Second defendant is none other than the son of the first defendant.

8. Heard Mr. K.Rajendran Prasad, learned counsel for the appellants and Mr.R.Gopalakrishnan, learned counsel for respondents 1 to 3.

9. Upon hearing the rival claims, the only point for consideration is whether the plaintiffs are entitled for the share of the suit property in pursuance of partition deed dated 22.8.1986 which is marked as Ex.A.1?

Point 1:- It is the case of the plaintiffs that the suit property is joint family property of the defendants and husband of the first plaintiff who constitute a member of the un-divided Hindu joint family. Originally, defendants 1 to 3 jointly filed written statement, confronting the claim of the plaintiffs. Thereafter, the second defendant filed additional counter supporting the case of the plaintiffs while confronting the objections, the defendants 3 and 1. The fourth defendant did not resist the claim of the plaintiff. Without making any objection in the suit, the fourth defendant now filed the present appeal along with the defendants 3 and 1. The plaintiff relied on Ex.A.1 i.e. Partition deed dated 22.8.1986 to sustain the claim. The genuineness of Ex.A.1 was spoken in detail by P.Ws 2 and 3. Though the said partition deed was signed by the defendants and the deceased husband of the first plaintiff, the same could not be registered due to sudden death of the husband of the first plaintiff. The genuineness of Ex.A.1 was not confronted by the defendants. In fact, the first defendant admitted that the suit property is joint family property and entered into a deed of partition along with other persons who have share in the suit property. It is also admitted by the first defendant that the suit properties are not his self acquired properties. It is further admitted that the defendants along with the deceased husband of the first plaintiff are entitled to the suit property. More over, the defendants have not filed any document to show that certain properties standing in their name were purchased out of their own income. Further the defendants failed to prove by any documentary evidencing that there was no income derived from the family estate of the first defendant or that the property is standing in the respective name were purchased out of their own income. In fact, the lower court considered the evidence in depth and found that the suit property in the joint family property of the defendants and deceased husband of the first plaintiff, who constitute a member of the undivided Hindu joint family.
The lower court has also rendered specific finding that certain properties standing in the name of the defendants were purchased out of the joint family estate. So, I am satisfied that the plaintiffs are entitled to 1/4th share in A and B schedule property. The lower court rightly analysing the evidence in depth came to the conclusion that the plaintiffs are entitled to 1/4th share in the A and B schedule property.

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Accordingly, granted the preliminary decree.

10. I do not find any illegality or irregularity in the finding of the trial Court. The finding of the lower Court is in order and does not require any interference. Accordingly, the appeal fails and the same is dismissed. Parties have to bear the respective costs.

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Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To

1.The Sub Court, Arani,
Nort Arcot-Ambedkar District.

2. The Record Keeper V.R. Section, High Court, Chennai

+ One cc to Mr. R. Tirugnanam Advocate SR 3252
+ One cc to Mr. P. Srinivas Advocate SR 3307
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J.A.K.SAMPATH KUMAR, J.

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Judgment in A.S.No.180 of 1993

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